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JUL 19 2004

OFFICE OF PETITIONS

In re Application of
Anafi et al. : DECISION REFUSING STATUS
Application No. 10/632,547 : UNDER 37 CFR 1.47(a)
Filed: August 1, 2003 :
Attorney Docket No. 367264-102 :
Title of Invention: Optical Membrane Formation:
System and Method :
:

This is in response to the petition filed May 6, 2004 (certificate of mailing May 3, 2004), under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on August 1, 2003, without a signed oath or declaration. Accordingly, on November 3, 2003, a "Notice to File Missing Parts of Application" was mailed requiring, for the purposes of this decision, an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on May 6, 2004, a petition, and a partially executed declaration were received. To make timely, a four month request for extension of time was filed with the accompanying fee.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers. Rule 47 applicant indicates numerous phone calls and e-mails were used to get inventor Ramsay to sign the declaration. However, rule 47 applicant did not indicate a copy of the application papers (specification, including claims, drawings, and oath or declaration) was presented to the non-signing inventor. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). Applicant should present copies of documentary evidence that would support a finding that the non-signing inventor has refused to execute the application papers i.e. copies of e-mails that were mailed to inventor where he failed to respond or indicated a refusal to sign the declaration.

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor and he refused to sign.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By delivery service:
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

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